

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:19CR1015 HEA
)	
KEITH HAYES,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation of Magistrate Judge John M. Bodenhausen, addressing Defendant's Motion to Suppress Statements and Evidence, [Doc. No. 22]. In his June 22, 2021 Report and Recommendation, Judge Bodenhausen recommended that the Defendant's motion be denied. Defendant has filed a written objection to this recommendation. For the reasons set forth below, the Court adopts Judge Bodenhausen's recommendation.

LEGAL STANDARD

When a party objects to the magistrate judge's report and recommendation, the Court must conduct a *de novo* review of the portions of the report, findings, or recommendations to which the party objected. See *United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003) (citing 28 U.S.C. § 636(b)(1)(A)). Where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law, the

Court may reconsider the matter. 28 U.S.C. §636(b)(1)(A). Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court reviews the findings of the magistrate *de novo*. The Court has reviewed the entire record for this purpose.

DISCUSSION

In his Report and Recommendation, Judge Bodenhausen recommends denial of the Motion to Suppress because Defendant's first statement was given before he was in custody and the second statement was not the result of an interrogation. With respect to the .38 caliber pistol seized from Defendant's waistband, Judge Bodenhausen recommends denial of the Motion to Suppress because Defendant has not identified any reason that would support suppression.

Defendant's objections to the Report and Recommendation are virtually identical to his memoranda in support of his motions. He does not specifically object to Judge Bodenhausen's findings of fact and conclusions of law. Judge Bodenhausen thoroughly discusses the facts and law in his Report and Recommendation. Defendant does not challenge these findings, rather, he states that the initial encounter with law enforcement was absent any legal justification, and that the subsequent search and seizure were in violation of Defendant's constitutional rights as articulated in his motion. Judge Bodenhausen addressed the issues and arguments Defendant raised in his motions. His conclusions of law are based on sound analysis of the law as applied to the facts of this case. The

initial encounter was clearly based on legal justification as Officer Schaffer testified that he was investigating a possible robbery and trespass. This gave rise to a reasonable suspicion that criminal activity may be afoot.

Defendant's statement about the gun was in response to the public safety question Officer Schaffer asked about anything that could stick or prick him. It had nothing to do with a gun; Defendant volunteered the information. Judge Bodenhausen correctly concluded that the question was asked to ensure the public safety and not to elicit incriminating statements.

With respect to Defendant's second statement, in order for the statement to be covered under *Miranda*, the statement would necessarily be in response to a question posed by Officer Schaffer. No such question was posed; no violation of *Miranda* therefore occurred. Defendant's objections are overruled.

Conclusion


Judge Bodenhausen's conclusions are based on sound legal analysis. The Court agrees with his conclusions in their entirety. The Recommendation is adopted *in toto*.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Suppress

Statements and Evidence, [Doc. No. 22], is **DENIED**.

Dated this 26th day of July, 2021.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE